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SANDISK CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SANDISK CORPORATION,

Plaintiff,

vs.

LUCENT TECHNOLOGIES INC. and  
ALCATEL-LUCENT, S.A.,

Defendants.

No. C 07-03618 JF

**SANDISK'S SUPPLEMENTAL CASE  
MANAGEMENT REPORT RE: STAY  
OF ACTION**

AND RELATED COUNTERCLAIM

C 07-03618 JF

SANDISK'S SUPPLEMENTAL CASE MANAGEMENT REPORT RE: STAY OF ACTION

1 Plaintiff SanDisk Corporation ("SanDisk") submits this Supplemental Case  
2 Management Statement to report on the parties' negotiations relating to Lucent's Motion to  
3 Dismiss Without Prejudice or Stay Pending Resolution of Appeal in Related Case.

4 On October 12, 2007, defendants Lucent Technologies Inc. and Alcatel-Lucent  
5 S.A. (collectively "Lucent") filed a Motion to Dismiss Without Prejudice or Stay Pending  
6 Resolution of Appeal in Related Case (the "Motion"). On November 30, 2007, and on  
7 February 15, 2008, the Court heard argument from the parties related to Lucent's Motion, and  
8 requested that the parties meet and confer to discuss whether they could reach an agreement  
9 under which this action could be stayed. Pursuant to the Court's request, the parties have been  
10 negotiating the terms under which SanDisk would consent to a stay of this action. Attached as  
11 **Exhibit A** is a draft stipulation that the parties have agreed to, except for one issue, as to which  
12 they seek the Court's guidance.

13 The attached stipulation provides the minimum protection needed for SanDisk to  
14 consent to a stay of this action. As discussed in SanDisk's Opposition to the Motion, SanDisk  
15 must obtain relief from the uncertainties created by Lucent's assertion of the patents. SanDisk  
16 Opposition to Motion at pp.6-7; *Electronics For Imaging, Inc. v. Coyle*, 394 F.3d 1341, 1346-  
17 47 (Fed. Cir. 2005). Only a judgment in SanDisk's favor would remove all of the uncertainty  
18 created by Lucent's assertions. However, the Stipulation alleviates enough of this uncertainty  
19 to allow SanDisk to consent to delay a determination of its rights and consent to a stay.

20 The parties disagree over one issue in the attached Stipulation: the length of the  
21 stay period. The Stipulation defines the end of the stay period as the Termination Date, plus  
22 some number of months. The parties disagree over the definition of Termination Date, and over  
23 the number of months that the stay will remain in place after the Termination Date.

24 SanDisk proposes that the stay remain in effect until all of the issues in the  
25 *Microsoft* case that could effect this case are fully and finally resolved. Lucent's position has  
26 always been that this action should be stayed until the "resolution" of the issues in the *Microsoft*  
27 case that could effect this case. See Lucent's Motion at 6:7, 7:7 and 7:11. This position is  
28 consistent with the discussion that the parties had with the Court on February 15, in discussing

1 the need for finality of the *Microsoft* appeal before the stay would dissolve. To achieve this  
2 goal, SanDisk proposes the following definition of Termination Date, which appears in the  
3 attached draft:

4 "Termination Date" shall mean the date on which all of the issues currently on  
5 appeal, except those specifically related to damages, in the "Group 2: Audio  
6 Patents" portion of the case captioned *Lucent Technologies, Inc., et al v. Gateway,*  
7 *et. al.*, Appeal Nos. 2007-1546, -1580 are fully and finally resolved, including  
exhaustion of all appeals, re-trials, or other proceedings of any kind.

8 SanDisk's definition allows the stay to remain in place so long as the issues from  
9 the *Microsoft* case that could effect this action remain unresolved. SanDisk also proposes that  
10 the stay remain in place for nine months after the Termination Date to give SanDisk sufficient  
11 time to consider and implement a possible design-around Lucent's patents.

12 In contrast, Lucent proposes that the stay be dissolved six months after the  
13 Federal Circuit issues its ruling, regardless of whether or not that ruling resolves any or all of  
14 the issues that could effect this case. As the Court is aware, the Federal Circuit has, historically,  
15 issued a variety of rulings under these circumstances, including partial affirmances, remands for  
16 further proceedings, etc. Furthermore, given the billions of dollars at stake in the *Microsoft*  
17 case, it is likely that one or both of the parties will seek review of the Federal Circuit's ruling by  
18 the Supreme Court. Under Lucent's definition, if the Federal Circuit leaves unresolved issues  
19 that could effect this action, the stay will dissolve, and the parties will be in the same position as  
20 they were when Lucent filed its Motion. The parties will then be back in front of this Court  
21 arguing the same issues that they are trying to resolve now. Furthermore, Lucent proposes that  
22 the stay remain in place for only six months after the Termination Date. However, if the  
23 Federal Circuit were to remand the case, or if the Supreme Court were to review the Federal  
24 Circuit's ruling, six months would be insufficient time to allow for the final resolution of issues  
25 that could effect this action.

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1 Therefore, SanDisk respectfully requests that the Court adopt the attached Stipulation as its  
2 Order on Lucent's Motion.

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4 DATED: March 7, 2008

5 Bingham McCutchen LLP

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8 By: /s/ Gregory L. Lippetz  
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